



**Attorney General
Betty D. Montgomery**

May 17, 1996

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
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Re: *In the Matter of Implementation of
the Local Competition Provisions
in the Telecommunications Act of
1996*

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Dear Mr. Caton:

Enclosed please find ~~DOCKET FILE COPY ORIGINAL~~ fifteen copies of the **Comments of the Public Utilities Commission of Ohio Phase II** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope. Also included is a floppy disk (DOS format) that has Ohio's Initial Comments (Word Perfect 5.1 format).

Thank you for your assistance in this matter.

Respectfully submitted,

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Enclosure

cc: Janice Myles, Common Carrier Bureau
International Transcription Services, Inc.

0214

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)
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Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 95-845-TP-COI

**INITIAL COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO STAFF
(PHASE II ISSUES)**

EXECUTIVE SUMMARY

In its phase one comments to the FCC in this investigation, the Public Utilities Commission of Ohio (PUCO) stated its recommendations to the FCC concerning, among other things, the regulatory model that should be adopted by the FCC that would be the most productive, efficient, and cooperative between regulatory jurisdictions. As stated in those comments, the PUCO is close to finalizing its comprehensive local competition rules in a pending docket, Case No. 95-845-TP-COI. Therefore, some of the detailed technical recommendations advocated below are subject to change in the PUCO's final rules that will be issued well before the FCC finalizes this NPRM. The PUCO plans to submit its final rules as a late-filed attachment in this NPRM docket. However, at this time, the PUCO Staff will offer its technical recommendations in these phase two comments. Specifically, the PUCO Staff provides the FCC with its recommendations concerning certain technical and policy issues regarding interconnector notice of technical changes, dialing parity, and rights-of-way.

Regarding incumbent local exchange carriers' (ILECs') obligation to provide reasonable public notice to interconnectors of technical changes, the PUCO Staff maintains that the ILECs should be required to provide notice whenever they intend to implement any changes that would alter their existing interconnection arrangements in any way. In addition to the interconnectors, such notices should also be served upon relevant industry forums, and affected state commissions, the FCC, and all interested parties. The PUCO Staff agrees with the FCC that the information provided should include, at a minimum, the date of the change, the location at which the change is to occur, the type of change, and potential impact.

As it concerns dialing parity, the PUCO Staff agrees with the NPRM that presubscription is the most feasible method of achieving toll dialing parity. The PUCO Staff further agrees that local non-toll dialing parity is realized through unbundling, number portability, and interconnection requirements of Section 251. As opposed to adopting a balloting process to enlist customers to their preferred intraLATA carrier, the PUCO Staff endorses a presubscription process that would afford customers a 90-day window of opportunity to select a new intraLATA carrier free of charge. After this 90-day window, a \$5.00 charge would apply for the first line switched and \$1.50 for each subsequent line. The PUCO Staff submits that the 2-PIC methodology is best suited to implement intraLATA presubscription. The PUCO Staff submits that the definition of local dialing parity include both intraLATA local and non-toll calls. Moreover, regarding non-toll dialing parity, the PUCO Staff agrees with the FCC that Section 251(b)(3) of the 1996 Act requires LECs to permit telephone exchange customers to dial the same number of digits to make a local call, without regard to the customer's choice of carrier.

The PUCO Staff maintains, as it concerns access to rights-of-way, that access to such facilities should be provided on a first-come, first-served basis. The burden to

demonstrate space limitation or exhaust should be placed upon the providing utility.

INTRODUCTION AND BACKGROUND

The Public Utilities Commission of Ohio Staff (PUCO Staff) hereby submits its initial comments pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-98 (In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996). Specifically, the FCC's NPRM in this investigation proposes rules to implement portions of Sections 251, 252, and 253 of the Telecommunications Act of 1996 (1996 Act).

Section 251 of the 1996 Act requires incumbent LECs to open their networks to new entrants. Section 251(c) of the 1996 Act requires LECs to make available to new entrants interconnection and unbundled network elements. Furthermore, 251(c) requires LECs to offer to telecommunications providers retail services at wholesale rates. Section 251(b) of the 1996 Act requires all LECs to offer resale, number portability, dialing parity, access to rights of way, and to establish reciprocal compensation arrangements for transport and interconnection. Section 252 of the 1996 Act imposes certain responsibilities upon the FCC should a state fail to assume its arbitration responsibilities regarding interconnection disputes between LECs. Section 253(a) of the 1996 Act forbids the states from affirmatively prohibiting competitive entry into the local telecommunications market and authorizes the FCC to preempt states that attempt to prohibit such competitive entry.

In these comments, the PUCO Staff submits its recommendations to the FCC concerning dialing parity, notice of technical changes, and access to rights of way. Comments concerning these matters are due at the FCC on or before May 20, 1996.

DISCUSSION

II. B. 4. Duty to Provide Public Notice of Technical Changes (§§189-194)¹

The NPRM notes that section 251(c)(5) of the 1996 Act requires ILECs to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks." NPRM at ¶ 189. The FCC interprets this mandate as applying to any changes to information in the LEC's possession, where such changes would affect interconnectors' performance or ability to provide telecommunications and/or information services. Regarding the term "interoperability," the FCC believes it should be defined as the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged. NPRM at ¶ 189. The PUCO Staff generally agrees with the FCC's interpretation of section 251(c)(5) of the 1996 Act. The PUCO Staff believes that ILECs should provide notice whenever they intend to implement any changes that would alter their existing interconnection arrangements in any way. Such notice should be served upon the following: (1) all parties interconnecting with the ILEC; (2) the relevant industry forums; (3) affected state commissions; (4) the FCC; and (5) all interested parties. Additionally, the PUCO Staff recommends that the FCC expand its definition of the term "interoperability" to recognize that the exchange of traffic between an ILEC and an interconnector must be seamless and transparent to both parties' end users, as noted in Section 256(a)(2) of the 1996 Act.

The FCC next tentatively concludes that ILECs should be required to disclose:

- 1) All information relating to network design and technical standards;
and

¹ These comments are organized and presented under the same outline utilized in the NPRM, with specific paragraph references where appropriate

- 2) information concerning changes to the network that affect interconnection.

NPRM at ¶ 190. In view of the ubiquitous nature of public notice, the PUCO Staff does not believe that such a requirement should apply to all information relating to network design and technical standards. Instead, we suggest that ILECs should only be required to provide public notice of information pertinent to those changes in its network design or technical standards that will affect its existing interconnection arrangements in any manner.

Where public notice is required of the ILEC, the FCC proposes the following minimum information be provided: (1) the date the changes (to its network or technical standards) are to occur; (2) the location(s) at which the changes are to occur; (3) the type of changes; and (4) the potential impact of the changes. The PUCO Staff concurs with these minimum information requirements.

Regarding the means by which an ILEC meets its public notice requirements, the FCC recommends that full disclosure of the required technical information should be provided through industry forums or in industry publications. NPRM at ¶ 191. As previously mentioned, the PUCO Staff proposes that, in addition to industry forums and publications, such notice should also be served upon all parties interconnecting with the ILEC; any affected state commissions; the FCC; and all interested parties.

With respect to timing of notice, the FCC tentatively concludes that "incumbent LECs should be required to: (1) issue public notice within a 'reasonable' time in advance of the implementation of changes; and (2) make the information available within a 'reasonable' time if responding to an individual request." NPRM at ¶ 192. The FCC seeks comment concerning what constitutes a reasonable time in each of these situations, and cites the timetable adopted in Phase II of the *Computer*

III proceedings (Phase II Recon. Order, 3 FCC Rcd. 1150, 1164, ¶ 116) as a possible guideline. NPRM at ¶ 192. In those proceedings, the FCC required AT&T and the Bell Operating Companies (BOCs) to disclose information about network changes or new network services that affect the interconnection of enhanced services with the network at two points in time. First, carriers were required to disclose such information at the make/buy point, when the carrier decides to make itself, or procure from an unaffiliated entity, any product the design of which affects or relies on the network interface. Second, carriers were required to release publicly all technical information no less than six months prior to the introduction of a new service or network change that would affect enhanced service interconnection with the network.

As stated above, the PUCO Staff contends that ILECs should only be required to provide public notice regarding changes in network design or technical standards that will affect existing interconnection arrangements. To that end, the PUCO Staff recommends a minimum of six months from the date of issuance of the public notice to implementation of the respective changes.

II. C. 3. Dialing Parity (¶¶202-219)

Regarding dialing parity, the FCC tentatively concludes that presubscription is "the most feasible method of achieving dialing parity in the long distance markets consistent with the definition of dialing parity in section 3(15) of the 1996 Act." NPRM at ¶ 207. The PUCO Staff agrees with the FCC's assertion that presubscription is the most feasible method of achieving toll dialing parity. The PUCO Staff further agrees with the FCC's assertion in footnote 285 that local non-toll dialing parity is accomplished through the unbundling, number portability, and interconnection requirements of Section 251. This distinction is important with respect to the BOC competitive checklist discussed in these comments below.

The NPRM seeks comment on alternative methods for implementing local and toll dialing parity. NPRM at ¶ 209-210. The FCC also seeks comment on the various methods of intraLATA presubscription adopted by any states. The PUCO Staff believes that presubscription for toll dialing parity is the most appropriate mechanism. Presubscription gives customers a clear understanding (at least, at one point in time) that they have a choice between various telecommunications carriers. The PUCO Staff does not favor balloting. Balloting is a confusing process to the customers. The PUCO Staff suspects that many customers, when faced with a ballot, do not understand what they are actually doing. Balloting may lead to customer complaints when customers who did not want to change were switched at random because they did not send in a ballot, or when they did send in a ballot but did not realize for what service they were actually requesting a change. Balloting forces customers who have no desire to switch providers to take affirmative action to maintain the status quo.

The PUCO Staff believes that presubscription alleviates most customer concerns. A customer who is in direct contact with a telecommunications provider to have service connected (or changed) is clearly in a better mode to understand competitive choice. The PUCO Staff favors presubscription for intraLATA toll service with a 90-day "one free switch" window. Upon initial notification to a customer that intraLATA toll choice is available, the customer is granted 90 days to make a first switch of intraLATA toll providers free of charge. After the 90-day window there would be a charge for each change of provider (e.g., \$5.00 for the first line and \$1.50 for additional line.)

The PUCO Staff believes the best methodology consistent with currently available network systems is the 2-PIC methodology. The PUCO Staff believes that the 2-PIC method, as defined by the FCC, offers the customer the most choice and provides for the most competitive participation. NPRM at ¶ 210. The next question

is on whether a nationwide methodology for implementing dialing parity is necessary. NPRM at ¶ 209.

The PUCO Staff believes that the 2-PIC methodology offers the best solution for all parties. However, the PUCO Staff sees no reason why other states should not be able to adopt another methodology if they believe another methodology is more appropriate. So long as minimum technical parameters are adhered to, there should be no compatibility problem with interconnecting networks employing differing dialing parity methodologies. Stated more directly in the context of this NPRM, there is no compelling reason to establish a nationwide uniform policy on dialing parity methodologies. If the FCC does consider a nationwide methodology, the PUCO Staff also believes it is imperative to consider the many states that have already implemented intraLATA dialing parity. Every effort should be made to avoid causing customers and carriers who now benefit from intraLATA carrier choice new confusion, aggravation, and significant additional expense.

The NPRM also discusses local (non-toll) dialing parity. NPRM at ¶¶ 211, 213-215. The FCC tentatively concludes that, pursuant to 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local call, notwithstanding the identity of a customer's or the called party's local telephone service provider." NPRM at ¶ 211. The FCC seeks comment on this tentative conclusion. The FCC also seeks comment on the requirement of a LEC, pursuant to section 251(b)(3), to provide access to numbers, operator services, directory assistance and directory listings.

The PUCO Staff agrees that Section 251(b)(3) requires a LEC to "permit" telephone exchange service customers within a defined area to dial the same number of digits to make a local call, without regard to the customer's or called party's local service provider. The PUCO Staff believes that the LEC must assure that this type of dialing parity is implemented through prompt and

nondiscriminatory unbundling, and number portability implementation. Pursuant to subsection (b)(3), LECs must provide access to telephone numbers, operator services, directory assistance and directory listing with no unreasonable dialing delays.

The FCC discusses the timetables for LEC implementation of intraLATA toll dialing parity. The FCC then seeks comment on what implementation schedules should be adopted. NPRM at ¶ 212. The PUCO Staff believes that new entrant LECs should be required to implement intraLATA toll dialing parity coincident with the offering of local telephone service. The Ohio Staff recognizes that ILECs have very large embedded systems that require conversions. These conversions must be implemented while maintaining service throughout their networks. New entrants have the capacity to have their network switches equipped this way before installation. For this reason, the PUCO Staff recommends that ILECs not offering interLATA service be given a reasonable period of time, e.g., 12 months, to convert their networks to implement intraLATA toll presubscription.

The NPRM states that "a BOC (Bell Operating Companies) seeking to provide in-region interLATA services ... [must] demonstrate, *inter alia*, that it has implemented intraLATA toll dialing parity." NPRM at ¶ 212 (footnote 289). The PUCO Staff strongly agrees with the FCC's interpretation of section 271(c)(2)(B)(xii) of the 1996 Act. The BOCs are required to implement intraLATA toll dialing parity "coincident with" entry into the interLATA market or three years from the enactment of the Act, whichever is earlier. However, should the BOC seek to provide in-region interLATA services prior to three years after enactment of the Act, it must first demonstrate, pursuant to the competitive checklist, that it has implemented intraLATA dialing parity.

Some parties may suggest that the requirement under section 271(c)(2)(B)(xii) which refers to "local dialing parity" only requires the BOC to have demonstrated

that it has permitted equal dialing requirements for non-toll local calls in a defined area notwithstanding the identity of the calling or called party's local telephone service provider. This argument goes to the need to dial additional digits (such as an area or access code) when making a local (non-toll) call. The PUCO Staff contends that it could not have been the intention of Congress to limit the term "local dialing parity" under this section of the Act to such a narrow definition. The definition of "dialing parity" found in Section 3(30) of the 1996 Act clearly contemplates and encompasses all calls exchanged between the LEC and any other carrier. In the reference to "local dialing parity" as opposed to "dialing parity" in the checklist, Congress may have intended to narrow the dialing parity requirements necessary for BOC entry into in-region interLATA service. However, they could not have intended to limit the definition of "local dialing parity" to simply intraLATA non-toll. The narrowest definition of "local" that have been intended is all intraLATA (non-toll and toll) calls.

As the FCC has noted in paragraphs 207 and 211, local non-toll dialing parity is accomplished through nondiscriminatory unbundling, number portability, and interconnection requirements. Since this limited type of dialing parity is achieved through meeting the requirements pursuant to the competitive checklist subsections (i), (ii), (iv), (v), (vi), (vii), (ix), (x) and (xi) of section 271(c)(2)(B), the reference to local dialing parity in subsection (xii) must refer to the broader definition of local dialing parity that also includes intraLATA toll dialing parity.

IntraLATA toll dialing parity is of significant competitive concern as evidenced by the proceedings in the eighteen states that have implemented intraLATA toll dialing parity. The PUCO Staff believes that Congress' intent in including dialing parity in the checklist was to require the BOCs that were seeking early entry into the in-region interLATA market to have implemented intraLATA

toll dialing parity as a competitive check against anti-competitive practices and unfair market power advantage of the incumbent BOCs.

The FCC also seeks comment on the recovery of LEC costs associated with the provision of dialing parity to competing providers. NPRM at ¶ 219. The FCC seeks comment on what, if any, standards should be used for arbitration of these cost recoveries. The PUCO believes that states should develop their own cost recovery guidelines for arbitration. However, should the FCC develop minimum guidelines for states to consider in its arbitrations, the PUCO Staff recommends a switched access minutes of use recovery methodology for the costs of intraLATA presubscription implementation. The incremental costs directly associated with the introduction of intraLATA dialing parity would be borne by all telecommunications carriers. Costs would be recovered based on a switched access per minute of use charges applied to all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service.

II. C. Obligations Imposed on "Local Exchange Carriers" by Section 251(b)

4. Access To Rights-of-Way (¶¶ 220-223)

Section 251(b)(4) imposes upon all LECs "the duty to afford access to poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications service on rates, terms, and conditions that are consistent with section 223." The 1996 Act amended several provisions of section 224 thereby requiring that the FCC adopt rules implementing several of these provisions in separate proceedings. However, the FCC seeks comment as to the meaning of "nondiscriminatory access" with respect to section 224(f)(1) and on specific standards under section 224(f)(2) for determining when a utility has "insufficient capacity" to permit access, in order to establish necessary rules to implement section 251(b)(4) requirements.

The PUCO Staff's opinion is that access to poles, ducts, conduits, and rights-of-way should be offered on a first-come, first-served basis, subject to space limitation. However, the burden of demonstrating space exhaustion or any other reason for denying access to poles, ducts, conduits, and rights-of-way should be on the providing utility. In demonstrating any space limitation, the providing utility should not be precluded from considering its own legitimate requirements.


CONCLUSION

In closing, the PUCO Staff wishes to thank the FCC for the opportunity to file comments in this docket.

Respectfully submitted,

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